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July 11, 2012

BY ELECTRONIC COMMENT FILING SYSTEM

Ms. Marlene H. Dortch Secretary Federal Communications Commission 445 12th Street, SW Washington, D.C. 20554

Re:

Ex Parte Notice – In the Matter of Application of Cellco Partnership d/b/a Verizon Wireless ("Verizon") and SpectrumCo LLC ("SpectrumCo") For Consent To Assign Licenses; Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC ("Cox") For Consent To Assign Licenses, WT Docket No. 12-4

Dear Ms. Dortch:

On July 9, 2012, Steven Berry, Tim Donovan and Rebecca Thompson of RCA – The Competitive Carriers Association ("RCA") and Michael Lazarus and Andrew Morentz of Telecommunications Law Professionals PLLC ("TLP"), counsel to RCA, met with Rick Kaplan, Jim Schlichting and Susan Singer of the Wireless Telecommunications Bureau and Joel Rabinovitz of the Office of General Counsel to discuss the Verizon-SpectrumCo/Cox transactions (the "Cable Company Transactions"). In particular, the parties discussed the Commission's Public Notice seeking comment on the impact of T-Mobile and Verizon's recent application for consent to swap certain advanced wireless services ("AWS") spectrum and to assign AWS licenses from Verizon to T-Mobile (the "Divestiture Transaction"). Additional discussions concerning the Cable Company Transactions were consistent with RCA's previous filings and communications in this proceeding, as described in further detail below.

RCA is pleased that T-Mobile, an RCA member, has reached a deal with Verizon to acquire much-needed AWS spectrum. RCA, however, remains concerned about the numerous anticompetitive harms that would result from an unconditioned grant of the Cable Company Transactions. While the Divestiture Transaction addresses concerns with respect to T-Mobile's access to useable, 4G-ready spectrum, it does not address: (i) continuing spectrum aggregation concerns and issues with access to spectrum for other rural and regional carriers; (ii) the lack of interoperability in the 700 MHz band, which limits competitive carriers' access to useable 4G spectrum, and future interoperability concerns in the AWS band; and (iii) serious issues relating to the availability of voice and data roaming. As such, the Commission must stringently condition any grant of the Cable Company Transactions to ensure a competitive future for the wireless industry. Indeed, with the Cable Company Transactions, the Commission has before it a true

¹ Wireless Telecommunications Bureau Seeks Comment On The Impact On The Verizon Wireless-SpectrumCo and Verizon Wireless-Cox Transactions of the Applications of Verizon Wireless and T-Mobile To Assign AWS-1 Licenses, Public Notice, DA 12-998 (rel. June 26, 2012).

win-win possibility. The Commission can address spectrum aggregation concerns that plague the industry, ensure that all carriers are able to obtain reasonably-priced data roaming arrangements and make substantial progress with respect to ensuring an interoperable Lower 700 MHz band.²

Substantial Divestitures of Both AWS and 700 MHz Spectrum Remain a Necessary Condition to Any Grant of the Cable Company Transactions

As noted above, RCA is extremely pleased that its member T-Mobile is likely to obtain access to much-needed spectrum resources through the proposed Divestiture Transaction. However, Verizon's actions, parting with excess spectrum to incent the FCC to grant the proposed Cable Company Transactions, serve to underscore the difficulty that competitive carriers face with respect to obtaining useable, 4G-ready spectrum on the secondary market. And, while the Divestiture Transaction is likely to partially resolve T-Mobile's spectrum shortage, it does nothing to resolve similar concerns for the other RCA carrier members, all of whom face a similar spectrum crunch.

The Twin Bells – Verizon and AT&T – currently have a substantial lead over their smaller rivals in the race to 4G, in large part because competitive carriers lack access to useable 4G spectrum. For example, while many of RCA's members hold 700 MHz A Block licenses – theoretically useable for 4G services the Commission is well aware that the A Block faces substantial hurdles to commercial deployment, including, most pressing, a lack of interoperability within the Lower 700 MHz band³ and issues relating to Channel 51 interference.⁴ Unless and until the Commission is able to resolve these problems, many RCA members will be left without a path to 4G. The hard choice faced by rural carriers in particular is evidenced by Verizon's own LTE in Rural America program. As RCA has stated, "[t]he fact that carriers would consider participating in this program at all shows the grave shortage of 4G LTE-capable spectrum available to rural and other competitive carriers, not to mention access to roaming and devices." As one RCA member recently noted, although Verizon's spectrum capacity in rural areas equals that which it holds in urban areas, Verizon's demand for bandwidth in rural areas is substantially lower.⁶ Thus, particularly in rural areas where there is no demonstrated demand for additional spectrum, the Commission must require Verizon to divest AWS spectrum to operating rural carriers to provide them with a path to 4G within a reasonable timeframe. Without a path to 4G, or without sufficient spectrum to expand their current 4G service offerings, RCA members will be left to wither on the vine.

Fortunately, the Commission has before it the opportunity to avoid these dire results. As part of any grant of the Cable Company Transactions, the Commission must ensure that carriers other than T-Mobile have the opportunity to obtain spectrum for which Verizon has not demonstrated a near-term need. Indeed, Verizon has publicly offered its 700 MHz A and B Block spectrum for sale, clearly

² Promoting Interoperability in the 700 MHz Commercial Spectrum/Interoperability of Mobile User Equipment Across Paired Commercial Spectrum Blocks in the 700 MHz Band, Notice of Proposed Rulemaking, 27 FCC Rcd 3521 (2012).

⁴ See, e.g., General Freeze on the Filing and Processing of Applications for Channel 51, Public Notice, 26 FCC Rcd 11409 (Med. Bur. 2011).

⁵ RCA Reply to Joint Opposition to Petition to Condition or Otherwise Deny Transaction, WT Docket No. 12-4, at 18-19 (filed Mar. 26, 2012) ("RCA Reply").

⁶ Comments of Atlantic Tele-Network, Inc., WT Docket No. 12-4, at 5 (filed Jul. 10, 2012).

demonstrating that it lacks a near- or even medium-term need for this spectrum.⁷ In addition to ordering further divestures of AWS spectrum, particularly in rural areas where Verizon has demonstrated no need for more spectrum, the Commission should also condition any grant of the Cable Company Transactions on Verizon's sale of its 700 MHz spectrum holdings. The Commission has the authority to independently order these 700 MHz divestitures,⁸ as well as the authority to accept such divestitures as voluntary conditions,⁹ and should do so to ensure that competitive carriers have reasonable access to 4G spectrum in the face of a consolidating industry dominated by the Twin Bells.

Any Divestiture of Verizon's 700 MHz Spectrum Must Include an Interoperability Condition

As RCA has repeatedly stated, conditioning any grant of the Cable Company Transactions on the divestiture of spectrum is not enough. Verizon must be required to divest useable spectrum that can be deployed for 4G services in the near term by operating entities. Allowing Verizon to spin off spectrum, such as the 700 MHz A Block, that lacks a mature 4G ecosystem may actually exacerbate the competitive harms arising from the Cable Company Transactions. However, the Commission does have the power to promote the development of an A Block ecosystem, and to counter the competitive harms arising from the Cable Company Transactions, by imposing an interoperability condition on the acquisition of any of Verizon's divested 700 MHz A or B Block spectrum. Requiring interoperability on divested 700 MHz spectrum is a transaction-specific remedy, as it ensures that spectrum aggregation concerns arising directly from the Cable Company Transactions are resolved. By enabling competitive carriers to obtain useable spectrum – not simply spectrum that could theoretically be used at some point in the future when interoperability concerns are resolved – the Commission can aid a smooth path to 4G for rural and regional carriers.

Given the nature of the spectrum being acquired by Verizon, the Commission must also place an interoperability condition on the AWS spectrum being acquired. As a result of the Cable Company Transactions and the swaps that accompany the Divestiture Transaction, Verizon will hold the substantial majority of the AWS B and F Blocks nationwide. As a result, should the Cable Company Transactions lack an AWS interoperability condition, Verizon will have the ability and incentive to create a boutique LTE band class consisting of the AWS B and F Blocks and the 700 MHz C Block – spectrum blocks that are effectively exclusive to Verizon. Creating this type of boutique band class would have the same damaging effects on wireless competition that AT&T's and Verizon's unique 700 MHz band classes already have had. As has been the case in the 700 MHz spectrum, manufacturers would focus on creating handsets specifically for Verizon's AWS spectrum because of its substantially larger customer base.

Further, such a boutique band class would also damage competitive carriers' ability to roam on Verizon's AWS spectrum. To the extent that Verizon's LTE services operated over a boutique band class consisting of the AWS B and F Blocks and the 700 MHz C Block, Verizon could decline to provide AWS roaming to carriers operating over Band Class 15 (which currently covers the entire AWS band, but not

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⁷ "Verizon Wireless To Conduct Spectrum License Sale," Press Release (Apr. 18, 2012), available at http://news.verizonwireless.com/news/2012/04/pr2012-04-18f.html.

⁸ RCA Ex Parte Notification, WT Docket No. 12-4, at 2-3 (filed Jun. 22, 2012).

⁹ Id. at 4-5.

¹⁰ See, e.g., RCA Reply at 35.

the 700 MHz C Block) based on the assertion that roaming is not "technically feasible" with Verizon's boutique configuration. This concern is grounded in stark reality. Currently, RCA members deploying a Band Class 12 network are finding that – even though Band Class 12 includes the Lower 700 MHz B and C Blocks – such devices are considered "technically incompatible" for the purposes roaming on AT&T's Band Class 17 network. Given the mess that has arisen in the Lower 700 MHz band, the Commission cannot afford to simply take Verizon at its word with regards to continued AWS interoperability. Verizon must not be allowed to balkanize the currently-harmonious AWS band to the detriment of the entire industry. To eliminate Verizon's incentive or ability to do so, the Commission must adopt an AWS interoperability condition in connection with any grant of the Cable Company Transactions.

The Divestiture Transaction Does Nothing to Allay RCA's Serious Concerns Regarding the Availability of Voice and Data Roaming

Despite the divestiture of spectrum to T-Mobile, the Cable Company Transactions still raise serious concerns relating to the availability of voice and data roaming, and any grant should include a condition addressing these concerns. As RCA has stated, if the Cable Company "Transactions are approved, the Twin Bells essentially will have unfettered control over the market for nationwide roaming services" in large part because "grant of the [Cable Company] Transactions will eliminate the Cable Companies as potential AWS band LTE roaming partners, which will have a significant and negative impact on the market for roaming services." As RCA discussed in its Petition, SpectrumCo's admission that difficulties in obtaining nationwide roaming arrangements seriously impacted its ability to provide service "simply underscores why any approval of the [Cable Company] Transactions must include strict voice and data roaming conditions to ensure that an already broken market does not fail entirely." 13

The Commission itself has recognized that the existence of roaming rules "does not . . . obviate the need to consider whether there is any potential roaming-related harm that might arise" from a transaction. This is because the voice and data roaming rules "do not enable a smaller or regional provider to replace the competitive position of a nationwide facilities-based provider," of and "do not serve as a substitute for competition in the provision of these important services." In light of these important recognitions, the Commission must also recognize that a divestiture of AWS spectrum to T-Mobile does nothing to address RCA's serious concerns that competitive carriers still have with respect to roaming. To combat the competitive harms associated with the Cable Company Transactions, the Commission must adopt stringent voice and data roaming condition with respect to Verizon that will allow new entrants and existing carriers to effectively compete in the market, such as applying the best available reseller rate Verizon is charging any of the Cable Companies to any requesting carrier.

¹¹ Reexaminaton of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, Second Report and Order, 26 FCC Rcd 5411, ¶ 43 (2011) (finding that "it is reasonable for a provider not to offer a data roaming arrangement where it is not technically feasible").

¹² RCA Petition to Condition or Otherwise Deny Transaction, WT Docket No. 12-4, at 34 (filed Feb. 21, 2012).

¹⁴ Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations, Order, WT Docket No. 11-18, FCC 11-188, ¶ 57 (rel. Dec. 22, 2011).

¹⁵ Id. at ¶ 67.

¹⁶ Id. at ¶ 104.

As RCA explained during the meeting, the Divestiture Transaction – while important to T-Mobile – does not resolve the many concerns that RCA has regarding the Cable Company Transactions. Therefore, the Commission must (i) require the divestiture of additional spectrum – both AWS and 700 MHz; (ii) impose an interoperability condition on all 700 MHz licenses divested in this transaction and on the AWS spectrum being acquired by Verizon to avoid the problems that currently plague the Lower 700 MHz band; and (iii) require that competitive carriers have access to data roaming at reasonable rates. Without these conditions, the Commission will waste an important opportunity to stem the damaging effects of consolidation in the wireless industry. The Commission can and should accomplish a number of important competitive and policy objectives by conditioning the Cable Company Transactions as discussed above.

Any questions regarding this notice should be directed to the undersigned.

Sincerely,

/s/ Michael Lazarus

Michael Lazarus Andrew Morentz of TELECOMMUNICATIONS LAW PROFESSIONALS PLLC

cc (via email): Chairman Julius Genachowski

Commissioner Mignon Clyburn Commissioner Robert McDowell

Commissioner Ajit Pai

Commissioner Jessica Rosenworcel

Angela Giancarlo Rick Kaplan Zac Katz Paul Murray Louis Peraertz Joel Rabinovitz Jim Schlichting Susan Singer